

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-10604 James Edwin Horn and Nam-Yong Horn

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and American Honda Finance Corporation Re: 2016 Honda CRV

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Edwin Horn	Pro Se
------------------	--------

Joint Debtor(s):

Nam-Yong Horn	Pro Se
---------------	--------

Trustee(s):

Howard B Grobstein (TR)	Pro Se
-------------------------	--------

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-10973 Dennis Patterson and Sandra McKay

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer
USA Inc., dba Chrysler Capital re 14 Fiat 500L

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dennis Patterson

Pro Se

Joint Debtor(s):

Sandra McKay

Pro Se

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-11690 Theresa J Pritchard

Chapter 7

**#3.00 Pro se Reaffirmation Agreement Between Debtor and Global Lending Services
 re 2014 Nissan Pathfinder**

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa J Pritchard

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

Adv#: 6:16-01265 Whitmore (TR) v. Davol, Inc. et al

#4.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01265. Complaint by Jesus Tapia against Davol, Inc., Bard Devices, Inc., C.R. Bard, Inc..
(Holding date)

From: 1/4/17, 2/1/17, 3/1/17, 4/12/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Defendant(s):

C.R. Bard, Inc.

Represented By
Christopher O Rivas

Bard Devices, Inc.

Represented By
Christopher O Rivas

Davol, Inc.

Represented By
Christopher O Rivas

Plaintiff(s):

Robert Whitmore (TR)

Represented By
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT...

Jesus M. Tapia

Douglas A Plazak
Troy A Brenes

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:13-25919 Larry Jack Wadsworth and Sherilyn Denise Wadsworth

Chapter 7

#5.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 108

Tentative Ruling:

6/7/2017

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative fees and expenses:

Trustee Fees: \$ 33,295.28

Attorney Fees: \$40,781.94

Attorney Costs: \$ 2,506.85

Accountant Fees: \$ 2,530

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Larry Jack Wadsworth

Represented By
Keith F Rouse

Joint Debtor(s):

Sherilyn Denise Wadsworth

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

**CONT... Larry Jack Wadsworth and Sherilyn Denise Wadsworth
Keith F Rouse**

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Represented By
Richard K Diamond
Steven J Schwartz
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:15-10609 Donald W McCasland and Victoria F McCasland

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 95

Tentative Ruling:

6/7/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 9,497.43
Trustee Expenses: \$ 454.37

Attorney Fees: \$ 42,308.50
Attorney Costs:\$ 797.60

APPEARANCES REQUIRED. Trustee to address September 29, 2016 order allowing claim of Richard Milewski as a general unsecured claim, on which basis the Trustee's final report appears incorrect.

Party Information

Debtor(s):

Donald W McCasland

Represented By
Ronald L Brownson

Joint Debtor(s):

Victoria F McCasland

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Donald W McCasland and Victoria F McCasland
Ronald L Brownson

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:10-22320 Rochelle A Lara

Chapter 7

#7.00 Motion of Trustee for Order Approving Settlement with Debtor

EH__

Docket 36

Tentative Ruling:

6/7/2017

BACKGROUND

On April 26, 2010, Rochelle Lara ("Debtor") filed a Chapter 7 voluntary petition. On August 16, 2016, Debtor received a discharge, and three days later, the case was closed.

On February 3, 2017, the case was reopened to administer a settlement award in the amount of \$174,349.78. On March 10, 2017, Debtor amended her schedules B & C to claim an exemption in the settlement awards pursuant to Cal. Code Civ. P. § 704.140. The Schedule C exemptions also removed exemptions of \$7,100 in cash and \$8,483 in anticipated tax refunds.

On May 1, 2017, Trustee filed a motion to approve compromise. Pursuant to the settlement, Trustee will receive \$24,750 from the settlement proceeds to distribute to creditors of the estate, and will release and abandon any right to the remainder.

DISCUSSION

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Rochelle A Lara

Chapter 7

Fed. R. Bankr. P. Rule 9019(a) states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The Court may grant approval if it determines that the compromise is "fair and equitable." *See In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1039 (9th Cir. 2016). In determining whether the compromise is fair and equitable, the Court applies a four-factor test. *See In re DiCostanzo*, 399 Fed. Appx. 307, 308 (9th Cir. 2010). The test was originally outlined in *In re A & C Props.*, and provides for consideration of

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

784 F.2d 1377, 1381 (9th Cir. 1986) (quotation omitted). "The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Typically, "a compromise should be approved unless it falls below the lowest point in the range of reasonableness." *In re Art & Architecture Books of the 21st Century*, 2016 WL 1118742 at *25 (Bankr. C.D. Cal. 2016) (quotation omitted).

Cal. Code Civ. P. § 704.140(b) provides that personal injury settlement awards can be exempted to the extent reasonably necessary for the support of the debtor. The primary argument raised by Trustee is that the extent to which Debtor's exemption may be reduced is highly uncertain, and that such a proceeding would involve complex facts and significant time and expenses. Given the complexity of the litigation required, and the consequent uncertainty regarding its prospects, in addition to the absence of any opposition to Trustee's motion, the Court finds that the proposed settlement is within the range of reasonableness.

TENTATIVE RULING

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Rochelle A Lara

Chapter 7

The Court is inclined to GRANT the motion, subject to discussion regarding how much of the settlement amount will be available to general unsecured creditors after payment of administrative expenses.

APPEARANCES REQUIRED. Movant's counsel may appear telephonically.

Party Information

Debtor(s):

Rochelle A Lara

Represented By
Brian C Fenn

Movant(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:11-30939 Roberta Louise Clark

Chapter 7

#8.00 Motion to Disallow Claims #8 (Toyota Motor Credit Corporation)

EH__

Docket 97

Tentative Ruling:

6/7/17

Background:

On June 27, 2011, Roberta Clark ("Debtor") filed a Chapter 7 voluntary petition. On October 12, 2011, Debtor received a discharge.

On April 30, 2012, Toyota Motor Credit Corp. ("Creditor") filed an unsecured claim in the amount of \$22,145.54 on the basis of a car loan. On July 18, 2012, Creditor amended its proof of claim, asserting an unsecured claim in the amount of \$3,649.01.

On May 4, 2017, Trustee filed a claim objection. The Court notes that the Trustee did not use the mandatory claim objection form.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie*

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT...

Roberta Louise Clark

Chapter 7

evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Creditor's claim was filed on April 30, 2012. The claims bar date was December 27, 2011. Therefore, Creditor's claim was not timely filed pursuant to Fed. R. Bankr. P. Rule 3002(c). Pursuant to 11 U.S.C. § 726(a)(2), tardily filed claims are subordinated to timely filed claims.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Roberta Louise Clark

Chapter 7

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Roberta Louise Clark

Represented By
Robert L Firth

Movant(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe

Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:09-30020 William Scott Graham and Rebecca Sue Graham

Chapter 7

#9.00 Motion of Trustee for Order: (1) Approving Settlement with Defendants; (2) Authorizing Trustee to Execute Documents Re Settlement; and (3) Authorizing Payments of Medical Liens

EH__

Docket 46

Tentative Ruling:

6/7/2017

BACKGROUND

On August 27, 2009, William & Rebecca Graham ("Debtors") filed a Chapter 7 voluntary petition. On January 12, 2010, Debtors received a discharge, and seven days later the case was closed.

On July 29, 2016, the case was reopened to administer settlement proceeds.

On January 17, 2017, Trustee filed a motion to approve compromise. That motion was denied on March 17, 2017. On May 1, 2017, Trustee filed another motion to approve compromise.

DISCUSSION

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... William Scott Graham and Rebecca Sue Graham

Chapter 7

Fed. R. Bankr. P. Rule 9019(a) states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The Court may grant approval if it determines that the compromise is "fair and equitable." *See In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1039 (9th Cir. 2016). In determining whether the compromise is fair and equitable, the Court applies a four-factor test. *See In re DiCostanzo*, 399 Fed. Appx. 307, 308 (9th Cir. 2010). The test was originally outlined in *In re A & C Props.*, and provides for consideration of

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

784 F.2d 1377, 1381 (9th Cir. 1986) (quotation omitted). "The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Typically, "a compromise should be approved unless it falls below the lowest point in the range of reasonableness." *In re Art & Architecture Books of the 21st Century*, 2016 WL 1118742 at *25 (Bankr. C.D. Cal. 2016) (quotation omitted).

As occurred in the original 9019 motion, Trustee has requested that the Court approve the settlement agreement, without actually providing the Court with a copy of the settlement agreement, or attempting to file the settlement agreement under seal. Trustee has, however, clarified the details of the settlement agreement and, subsequent to the first hearing, obtained authorization to employ special counsel.

Because the settlement agreement would provide proceeds to pay allowed, unsecured claims in full, and in the absence of any opposition, the Court concludes that the *A&C* factors weigh in favor of approval of the settlement. Because creditors will be paid in full, the settlement is in the best interest of the estate, and there does not appear to be any plausible benefit of continuing to litigate the complex claim.

TENTATIVE RULING

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... William Scott Graham and Rebecca Sue Graham

Chapter 7

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

William Scott Graham

Represented By
Edward G Topolski

Joint Debtor(s):

Rebecca Sue Graham

Represented By
Edward G Topolski

Movant(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#10.00 CONT Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

From: 4/26/17, 5/10/17

Also #11

EH__

Docket 35

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -

Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#11.00 Motion Authorizing Compromise of Controversy Related to Mesh Claims
Pursuant to Federal rules of Bankruptcy Rule 9019

Also #10

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By
James M Powell - DISBARRED -
Michael H Raichelson

Movant(s):

Steven M Speier (TR)

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#12.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 4/5/17, 5/17/17, 5/31/17

Also #13

EH__

Docket 33

Tentative Ruling:

04/05/17

BACKGROUND

On August 30, 2016 ("Petition Date"), Efren Estrada ("Debtor"), filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). On December 12, 2016, the Debtor received a chapter 7 discharge.

On March 14, 2017 (or approximately 7 months after the Petition Date and post-discharge), the Debtors filed their motion for conversion of their case to a case under chapter 13 ("Motion"). On March 22, 2017, the Trustee filed opposition to the Debtors' Motion ("Opposition"). On March 29, 2017, the Debtors filed their reply ("Reply").

DISCUSSION

The Trustee argues that the Debtor's Motion should be denied because it has been filed in bad faith and because the Debtor's chapter 7 discharge precludes conversion pursuant to this Court's holding in *In re Santos*, 561 B.R. 825, 829 (C.D. Cal. 2017).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

In response, the Debtor asserts that he will propose a chapter 13 plan that would pay the creditors whose debts have presumably already been discharged in this case. The only basis advanced by the Debtor to support his contention that a Debtor can propose to pay already discharged debts in a post-discharge converted chapter 13 case is that a different Judge in the Central District permitted such conversion in another case known to Counsel for the Debtor. The Debtor, however, has not indicated the legal basis for this other court's ruling and such ruling would not be binding on this Court. Separately, the Court notes that although not expressly discussed in the Memorandum Decision on *Santos*, the Debtors in that case had also proposed to pay creditors whose debts had already been discharged at 100% through a confirmed chapter 13 plan. However, the bare promise that such a plan will be proposed where the Debtor's chapter 7 debts have already been discharged has no binding effect.

Having failed to distinguish *Santos*, the Court declines to reach the issues raised by the Trustee regarding alleged bad faith of the Debtor in failing to properly identify the nature of his interest in the Property.

TENTATIVE RULING

Based on the foregoing, and following the *Santos* holding, the Court finds that "cause" exists to deny the Debtor's request for conversion because the Debtor has received the benefits of a chapter 7 discharge and now seeks to avoid the concomitant burden of allowing the Trustee to administer the Debtor's assets for the benefit of creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#13.00 CONT Motion to Vacate Discharge to enable Conversion of Case to Chapter 13

From: 5/17/17, 5/31/17

Also #12

EH__

Docket 39

Tentative Ruling:

6/7/17

Background:

On August 30, 2016, Efren Estrada ("Debtor") filed a motion to vacate discharge. On Schedule A, Debtor listed certain real property located in Ontario, California (the "Property"), in which Debtor asserted an interest as joint tenant. Debtor estimated the value of the Property as \$385,000. On Schedule C, Debtor claimed an exemption in the Property of \$100,000 and, on Schedule D, Debtor listed Seterus as having a security interest in the Property in the amount of \$207,757. Therefore, the information identified in Debtor's schedules suggested that there was \$77,243 in equity in the property above Debtor's exemption.

On November 30, 2016, Trustee filed an application to employ general counsel. The application identified the potential sale of the Property as the primary justification for the employment of counsel. On December 12, 2016, Debtor received a discharge. On December 21, 2016, Trustee's application to employ general counsel was granted. Between January 17, 2017, and March 14, 2017, Debtor filed four substitutions of attorney. On February 21, 2017, the deadline for filing claims expired with no proofs of claim having been filed against the estate. Seven days later Trustee filed six

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

unsecured proofs of claim totaling \$21,459.

On March 14, 2017, Debtor filed a motion to convert to Chapter 13. On March 16, 2016, Debtor amended Schedules I & J, increasing monthly disposable income from \$0 to \$493. The increase was primarily attributable to a \$900 monthly increase in family contributions, from \$350 to \$1250. On March 22, 2017, Trustee filed his opposition to Debtor's motion to convert. Debtor filed a reply on March 29, 2017, indicating that he was willing and able to pay a 100% plan and would consent to a conversion order containing a condition that dismissal of the case would be prohibited without a hearing and notice to the Chapter 7 Trustee.

At a hearing on Debtor's motion to convert, the Court informed Debtor that it had recently held that a post-discharge conversion to Chapter 13 was generally inappropriate. *In re Santos*, 561 B.R. 825 (Bankr. C.D. Cal. 2017). Debtor indicated that he would file a motion to vacate discharge, and the Court continued the matter.

On April 26, 2017, Debtor filed a motion to vacate discharge. On May 3, 2017, Trustee filed his opposition to the motion.

Legal Analysis:

Debtor has relied upon Fed. R. Civ. P. Rule 60(b). Rule 60(b), made applicable to bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024, states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;
- (6) any other reason that justifies relief.

Debtor cites *In re Starling* for the proposition that Rule 60(b) can be utilized by a debtor to vacate a discharge. 359 B.R. 901 (Bankr. N.D. Ill. 2007). *See also In re Mosby*, 244 B.R. 79, 90 (Bankr. E.D. Va. 2000) ("The Court concurs with the reasoning in *Cisneros* and *Jones* and concludes that relief in the form of an order vacating a chapter 7 discharge may potentially be granted on motion of a debtor under Rule 60(b), Fed. R. Civ. P., as incorporated by Fed. R. Bankr. P. 9024."); *In re Hauswirth*, 242 B.R. 95, 97 (Bankr. N.D. Ga. 1999) ("Debtor's conversion to Chapter 13 before the Chapter 7 Trustee has completed the administration of the estate but after the discharge order is entered thwarts the proper operation of the Code, as it interrupts the complete administration intended by Congress. Pursuant to Bankruptcy Rule 9024, which incorporates FRCP 60, or, alternatively, pursuant to this court's authority under 11 U.S.C. § 105, the inconsistency of allowing a debtor two discharges in one case may be avoided by vacating a debtor's Chapter 7 discharge.").

As noted by *In re Starling*, there may be tension between the approach adopted by Debtor and the operation of 11 U.S.C. § 727(d), which provides the mechanism whereby a trustee, a creditor, or the United States Trustee can seek revocation of a debtor's discharge. While *In re Starling* concluded that the existence of § 727(d) does

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

not foreclose the ability to vacate a discharge pursuant to Rule 60(b), other courts have held to the contrary. *Compare* 359 B.R. at 913 with *In re Markovich*, 207 B.R. 909, 913 (B.A.P. 9th Cir. 1997) ("We agree with the bankruptcy court that it did not have the inherent equitable power to revoke a discharge outside the framework of § 727(d). The equity power of the bankruptcy court cannot be used to override specific statutory provisions in the Code."). Therefore, this Court must determine: (1) whether it is legally permissible for a debtor to utilize Rule 60(b) to vacate a discharge; and, if it is permissible, (2) whether the facts of this case warrant granting Debtor's motion to vacate discharge.

I. Application of Rule 60(b) to Discharge

A. Markovich & Starling

As noted above, *Markovich* and *Starling* represent opposite interpretations of the applicability of Fed. R. Civ. P. Rule 60(b) to discharge orders in light of § 727(d). *Markovich*, in concluding that § 727(d) precluded application of Rule 60(b) to discharge orders, summarily stated, after citing conflicting decisions, that: "[t]he equity powers of the bankruptcy court cannot be used to override specific statutory provisions in the Code." This statement, without greater legal analysis, is not compelling. Important in interpreting the discussion in *Markovich* is footnote 2 therein, which states, in part: "[t]he soundness of this argument is questionable since nothing was to be gained by moving to vacate the discharge in Debtor's chapter 7 case. The nondischargeable claim could be discharged in either a converted chapter 13 or a new chapter 13 case filed by Debtor." Contextually, the *Markovich* court believed that Debtor's request to vacate discharge was unnecessary,¹ an important consideration in interpreting the Court's decision to summarily affirm the bankruptcy court.

In re Starling, however, meticulously analyzes the same issues that the Court is confronted with here. First, *Starling* noted that the decision in *Disch v. Rasmussen*, 417 F.3d 769 (7th Cir. 2005), precluded the court from relying on § 105(a) to allow the

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

debtor to vacate its discharge. 359 B.R. at 913. Nevertheless, the *Disch* court noted that it was legally permissible for a discharge order to be vacated through the use of Fed. R. Civ. P. Rule 60:

Final bankruptcy orders can be set aside under Bankruptcy Rule 9024, *see In re Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir. 1988), and nothing in the rule indicates that it does not apply to the revocation of discharges.

417 F.3d 769, 778 (7th Cir. 2005). *Starling* adopted the reasoning in *Disch*, stating: "based on the Seventh Circuit's decision in *Rasmussen*, it is within discretion here to vacate the order of discharge based on one of the reasons listed in Rule 60(b) Fed. R. Civ. P., should any be applicable." 359 B.R. at 913.

Notably, as identified in *Disch*, the Ninth Circuit Court of Appeals has noted that Rule 60(b) could be used to vacate a discharge in a Chapter 13 case. *In re Cisneros*, 994 F.2d 1462, 1466 (9th Cir. 1993) ("Section 1328(e) therefore does not conflict with Rule 9024 as applied by the bankruptcy court. . . . The bankruptcy court and the BAP therefore properly rejected the Debtors' argument that section 1328(e) serves to limit the power conferred upon the court by Rule 60(b) through Bankruptcy Rule 9024.).² Trustee has not made an attempt to distinguish the discharge revocation provision in Chapter 13 from the discharge revocation provision in Chapter 7, but instead cites a case from the United States Bankruptcy Court, Eastern District of Pennsylvania, *In re Nader*, 1998 Bankr. LEXIS 1381 at *13-14 (Bankr. E.D. Pa. 1998), which limited the scope of *Cisneros* based on a Third Circuit Court of Appeals decision, *In re Fesq*, 153 F.3d 113 (3rd Cir. 1998). This Court does not have the same discretion – *Cisneros* is binding on this court to the extent the analysis is applicable to a Chapter 7 case, and *Fesq* is merely persuasive. Therefore, the Court will not adopt a narrow reading of *Cisneros* in deference to *Fesq*.

B. Relationship Between Fed. R. Civ. P. Rule 60(b) and 11 U.S.C. § 727(d)

The tension between the *Markovich* and *Starling* decisions rests in their conflicting

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

interpretations of whether the statutory interpretation doctrine of *expression unius est exclusion alterius* necessitates a conclusion that the operation of § 727(d) results in field pre-emption. More specifically, the reasoning illustrated by *Markovich* stands for the proposition that because Congress detailed procedures for the revocation of discharge in § 727(d), it is improper for a bankruptcy court to interpret the Fed. R. Civ. P. as providing additional grounds for the revocation of discharge. *See generally* 207 B.R. at 913.

On the other hand, *Starling* interprets the scope of § 727(d) more narrowly, concluding that while the statute provides the mechanism by which a trustee, creditor, or the United States Trustee may obtain a revocation of discharge, it does not govern or limit attempts by a debtor to revoke his or her own discharge. 359 B.R. at 914. *Starling* notes that the mechanism for revocation of discharge in the Bankruptcy Act of 1898 (11 U.S.C. § 33) explicitly included any party in interest, and that the phrase "any other party in interest" was deleted in the drafting of the Bankruptcy Code. *Id.* The removal of that phrase is not conclusive, however, because it could either be interpreted as implying a Congressional intent to eliminate the ability of a debtor to seek revocation of a discharge, or as simply implying that Congress no longer intended for that provision to apply to debtors.

The Court concludes that it is implausible to assert that § 727(d) is literally the *only* mechanism by which a discharge could be revoked. For instance, if the granting of a discharge was a clerical error, the Court could revoke the discharge pursuant to Fed. R. Civ. P. Rule 60(a). *See, e.g., In re Ali*, 219 B.R. 653, 655 (Bankr. E.D.N.Y. 1998). Therefore, it is not accurate that § 727(d) governs the entire universe of reversing a discharge. Instead, it is a question of scope, i.e., what mechanism(s) other than 727(d) can vacate or revoke a discharge? Without endeavoring to determine all such mechanisms, as shown below, a Rule 60(b) motion brought by a debtor appears to be one such mechanism.

The Court notes that there is a simple and logical reason that a debtor is not among the parties identified as having express standing to pursue a revocation of discharge pursuant to § 727(d): all of the enumerated grounds for such a request pertain to bad acts of the debtor. Indeed, § 727(d) appears designed for the sole purpose of punishing debtors who act in bad faith or fail to fulfill statutory duties. Clearly, implicit in the statute is an assumption that the provision will be utilized in cases

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

where the debtor wishes to retain his discharge.

Therefore, § 727(d) is completely silent as to a situation where a debtor wishes to vacate his discharge. This situation is categorically distinct from the type of situation contemplated by § 727(d) in two important respects: (1) the debtor does not wish to retain his discharge; and (2) the debtor has not committed a bad faith act. These two distinctions create a fundamentally different situation. And while § 727(d) serves a coercive function, encouraging complying with statutory duties, Rule 60(b) serves a corrective function, ensuring that justice is equitably administered. Because § 727(d) serves a fundamentally different purpose and is applicable in fundamentally different situations, the Court concludes that, in accordance with *Disch* and *Starling*, § 727(d) does not preclude a debtor's use of Rule 60(b) to revoke a discharge.

This conclusion does not violate the canon of *expressio unius est exclusio alterius* because, as noted by *Starling*, the Supreme Court has stated:

[a]s we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an "associated group or series," justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.

Barnhart v. Peabody Coal Co., 537 U.S. 149, 168 (2003). In the context of § 727(d), a debtor is not part of the same "associated group or series," as the expressed parties – when § 727(d) is invoked, the debtor's interests and goals are typically diametrically opposed. *See generally* 359 B.R. at 915 ("Moreover, one cannot reasonably argue that a debtor falls within the 'associated group or series' listed in the statute in order to apply the *Expressio Unius* doctrine. The interests of a Chapter 7 debtor are not identical or even remotely similar to those of a trustee, creditors or the United States trustee."). It simply bends logic to make a substantive legal inference that § 727 bars a debtor's request where a debtor is not among the parties identified as having standing to bring a § 727(d) motion, and a § 727(d) motion is only designed to punish or coerce a debtor.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

Certainly, strong policy considerations exist to ensure that debtors are free from any harassment or pressure to vacate a discharge. To find otherwise and to allow a debtor to vacate his discharge without close scrutiny would undermine the bedrock principle of a debtor's fresh start. As discussed below, the circumstances of this case do not present that situation.

II. Application of Rule 60(b) to Facts of Case

Debtor argues that Rule 60(b)(1), (5), and (6) justify vacation of discharge in this case. Rule 60(b)(1) provides four disjunctive grounds for relief: (1) mistake; (2) inadvertence; (3) surprise; and (4) excusable neglect. In referring to the Rule, Debtor mentions excusable neglect and surprise, although Debtor does not provide legal standards for either. In discussing Rule 60(b)(5), Debtor has identified the final provision, "or applying it [the judgment] prospectively is no longer equitable," but, again, there is no legal analysis. Factually, Debtor makes two arguments that he believes could support granting the motion in accordance with at least one of the legal provisions: (1) ineffective assistance of counsel; and (2) a belief that the post-discharge conversion was allowed. Ultimately, both Debtor and Trustee have primarily focused on briefing the issues presented in section I, *supra*, and the discussion of the application of Fed. R. Civ. P. Rule 60(b) to the facts of this case is somewhat lacking.

A. Ineffective Assistance of Counsel

Courts disagree about whether, and in what circumstances, attorney error justifies relief under Fed. R. Civ. P. 60(b). Judge Easterbrook has held that attorney negligence is never an acceptable basis for relief under the rule. *See U.S. v. 7108 West Grand Ave., Chicago, Ill.*, 15 F.3d 632, 633-35 (7th Cir. 1994) ("Yet why should the label 'gross' make a difference to the underlying principle: that the errors and misconduct of an agent redound to the detriment of the principal rather than of the adversary in litigation?"). The Ninth Circuit has disagreed, holding that in cases of "gross

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

negligence" relief is warranted under Fed. R. Civ. P. 60(b)(6). *Cnty Dental Servs. V. Tani*, 282 F.3d 1164 (9th Cir. 2002) ("While the above principles provide the general rule regarding the client-attorney relationship, several circuits have distinguished a client's accountability for his counsel's neglectful or negligent acts – too often a normal part of representation – and his responsibility for the more unusual circumstance of his attorney's extreme negligence or egregious conduct."). And, on the other hand, the Ninth Circuit has found ordinary carelessness to be grounds for relief when there exists an extraordinary or unusual extrinsic cause.³ See, e.g., *Medina v. Wells Fargo Bank, N.A.*, 2016 WL 2944295 at *2 (C.D. Cal. 2016) (collecting cases). There is, however, much space on the spectrum between gross negligence (when an attorney is no longer acting on behalf of a client) and ordinary "carelessness" in which relief under 60(b) will be granted.

Furthermore, there is a tendency to distinguish between a deliberative mistake with unintended consequences and an inadvertent attorney error. *Parks v. Armour Pharms.*, 1995 WL 13232 at *1 (N.D. Cal. 1995) ("This case is distinguishable from that in *Nemaizer v. Baker*, 793 F.2d 58 (2nd Cir. 1986), wherein the dismissal with prejudice was based upon a stipulation with defense counsel and an apparent misunderstanding by plaintiff of the effect of the stipulation. Here, plaintiffs' counsel and his secretary unilaterally and inadvertently filed a dismissal containing unintended 'with prejudice' language. They did not fail to appreciate the effect of the dismissal with prejudice; they failed to realize what they inadvertently filed.").

The distinction noted in *Parks* is illustrative of the problem here. As *Parks* notes, a party should not be allowed to modify past decisions that were deliberately chosen solely because the party did not comprehend the consequences of the decision. Alternatively, a party should not be forced to maintain a position it inadvertently adopted if there is little risk of significant prejudice to the other party. Here, it cannot be seriously contended that the filing of a Chapter 7 petition was an inadvertent action, as contrasted with an intentional act, the consequences of which Debtor did not entirely comprehend. Additionally, there is no indication that the alleged attorney negligence reached the level of gross negligence which would sever the agent-principal relationship. Finally, there is no indication that there were any acts that resemble the type of ordinary "carelessness" that courts have determined can be the basis for relief under Rule 60(b).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

B. Change in Law

While not adequately briefed, Debtor also seems to suggest that the Court's *Santos* decision constitutes an intervening change in law. [Dkt. 39, p. 6: "The intervening case of *In re Santos*, which expressly limited if not eliminated the Debtor's right to convert after discharge, is a further basis to rule that it is no longer equitable that the discharge order should have prospective effect, because it extremely limited the Debtor's ability to convert to Chapter 13 after receipt of a Chapter 7 discharge."]. *Santos* did not constitute a change in law, but, rather, the case applied the Supreme Court's *Marrama* decision to a motion to convert post-discharge. A trial court simply does not change law.

C. Miscellaneous: 60(b)(5) & 60(b)(6)

The Court interprets Debtor's invocation of Rule 60(b)(5) and (6) as not being solely constrained to the factual arguments made above.

The final prong of Rule 60(b)(5), a general equitable prong, is not applicable in the present situation because the rule applies to judgments that have prospective application, typically indicated by the potential for continuing supervision. *See, e.g., Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647-48 (1961) ("A balance must thus be struck between the policies of res judicata and the right of the court to apply modified measures to changed circumstances."); *Normva v. Elkin*, 849 F.Supp.2d 418, 423-24 (D. Del. 2012(collecting cases on prospective application). "The standard used in determining whether a judgment has prospective application is whether it is "executory" or involves the supervision of changing conduct or conditions." *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995) (quotation omitted). A discharge is not a prospective judgment.

Finally, Debtor cites Fed. R. Civ. P. Rule 60(b)(6), the equitable, catchall provision. "That clause gives the [] court power to vacate judgments 'whenever such action is

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

appropriate to accomplish justice." *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982) (quoting *Klapprott v. U.S.*, 335 U.S. 601, 615 (1949)). "In order to obtain such relief from a judgment, however, 'extraordinary circumstances' must exist." *Id.* (quoting *Ackerman v. U.S.*, 340 U.S. 193, 199 (1950)). Rule 60(b)(6) is, however, potentially applicable to the case here. *See, e.g., Espinosa v. United Student Aid Fund, Inc.*, 553 F.3d 1193, 1199 (9th Cir. 2008) ("After a judgment (*including a discharge*) is finalized, and the time for appeal has run, the judgment can only be reconsidered in the limited circumstances provided by Rule 60(b).") (emphasis added).

As a preliminary matter, as to the Rule 60(b)(6) "exceptional" or "extraordinary circumstance" standard, Rule 60(b)(6) must be interpreted in its applicable context. The court in *Santos* stated that: "[T]here is no absolute prohibition on converting a case from Chapter 7 to Chapter 13 post-discharge, but pre-closing; rather there is a § 1307(c) 'for cause' review." 561 B.R. 825, 830 (Bankr. C.D. Cal. 2017). The court noted its belief that a post-discharge conversion appeared to be presumptively an abuse of process. *See generally id.* at 830-31. Nevertheless, as discussed in *Santos*, certain factual situations could be considered sufficient to rebut the presumption that conversion is an abuse of process. Vacating the discharge, a procedure the debtors did not attempt in *Santos*, along with agreeing to procedures that eliminate or substantially reduce the potential prejudice to any other parties, indicate the absence of abuse of process.

In order to secure conversion in this case, however, Debtor must meet two standards. First, Debtors must satisfy the standard of Rule 60(b)(6) to vacate the discharge, then Debtors must overcome the presumption that conversion is an abuse of process. If the former standard is higher than the latter, the result is illogical: there would be a certain subset of cases in which the latter standard would be satisfied, but the Rule 60(b)(6) standard would not be satisfied. For instance, in this situation, assuming, *arguendo*, that Debtor failed to show the necessary extraordinary circumstances, it may be reasonable to conclude that the facts of the case and the conduct of Debtor overcome the presumption that post-discharge conversion would be an abuse of process, and the result would be that Debtor would be allowed to convert, and retain his discharge. That result is illogical and untenable.

Therefore, utilizing an interpretation of Rule 60(b)(6)'s "any other reason that justifies relief" that imposes a standard higher than that required to rebut the presumption that

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

conversion is an abuse of process would frustrate the reasoning of *Marrama* as applied to these circumstances, and as thoroughly discussed in *Santos*. See generally *id.* at 829-31. Cognizant of that fact, the Court concludes that the Supreme Court's *Marrama* decision requires the Court to consider the interests of justice when considering a Rule 60(b)(6) motion to revoke a discharge, and that the "extraordinary circumstance" test must be interpreted in light of the reasoning in *Marrama*.

In the case at hand, there are three primary sets of facts that, in combination, the Court believes rise to the level of "extraordinary circumstances" and contribute to finding that vacating the discharge is necessary to further justice: (1) evidence that Debtor's alleges that his original counsel gave him inaccurate and incomplete legal advice regarding his choices in bankruptcy and the effect bankruptcy may have on his home; (2) no creditors have participated in this case, and the only claims filed were filed by the Trustee (the claims were also filed after the entry of discharge); and (3) Debtor has proposed a Chapter 13 plan which will pay creditors 100%.

This represents the rare situation in which the debtor is the party that seeks to revoke the discharge and thereafter pay all creditors in full, including Trustee for his professional fees. Thus, the revocation of the discharge will not meaningfully impair the rights of any other parties, but, instead would simply fulfill a prerequisite to Debtor's conversion to Chapter 13, thereby facilitating payment in full to creditors. Only the conversion of the case, not the vacation of discharge, may be said to modify the rights of any party in interest. And even then, any impairment would merely be that the creditors for whom Trustee filed a proof of claim will be paid over a longer period of time.

Based on the foregoing, the Court is left with the clear impression that revocation of the discharge is required to prevent manifest injustice pursuant to Rule 60(b)(6). Furthermore, the efforts undertaken by Debtor to remedy a situation apparently produced by ineffective legal counsel, namely Debtor's efforts to vacate his Chapter 7 discharge and propose a plan that pays 100 percent to creditors and minimizes, to the extent possible, any prejudice to other parties, establishes that conversion, after the discharge is vacated, would not be an abuse of process in this situation.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Efren Diaz Estrada

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion and VACATE the discharge.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:16-18319 YBF Tax, Inc.

Chapter 7

#14.00 Motion/Objection to Disallow Claim of Rosa Bryant (Claim No 2)

EH__

Docket 34

Tentative Ruling:

6/7/17

Background:

On September 16, 2016, YBF Tax, Inc. filed a Chapter 7 voluntary petition. On January 24, 2017, Rosa Bryant ("Creditor") filed an unsecured claim in the amount of \$2,500,000 on the basis of the pending lawsuit. On May 12, 2017, Debtor filed a claim objection.

The Court notes that Debtor did not use the mandatory claim objection form or the mandatory proof of service form. Additionally, Debtor's claim objection is not supported by any admissible evidence.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim,

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... YBF Tax, Inc.

Chapter 7

that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtor objects to Creditor's claim on the basis that it "has not been litigated to a decision." That is not a valid basis to file a claim objection. 11 U.S.C. § 101(5)(A) states:

(5) The term "claim" means –

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT...

YBF Tax, Inc.

Chapter 7

disputed, undisputed, legal, equitable, secured, or unsecured

Debtor's claim, therefore, fits within the statutory definition of claim. Moreover, § 502(c) expressly allows the Court to estimate an unliquidated claim.

Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

YBF Tax, Inc.

Represented By
Ronald W Ask

Movant(s):

YBF Tax, Inc.

Represented By
Ronald W Ask
Ronald W Ask

Trustee(s):

Karl T Anderson (TR)

Represented By
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:16-20058 Kellie Eugena Malveaux

Chapter 7

#15.00 Motion to Withdraw as Attorney

EH__

Docket 21

Tentative Ruling:

6/7/17

BACKGROUND

On November 11, 2016, Kellie Malveaux ("Debtor") filed a Chapter 7 voluntary petition. On February 21, 2017, Debtor received a discharge. The meeting of creditors has been repeatedly continued.

On May 8, 2017, Mona Patel ("Counsel") filed a motion to withdraw.

DISCUSSION

Local Rule 2091 provides the procedure for an attorney to withdraw as counsel of record.

Movant has not presented any evidence, however, in support of the motion.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Kellie Eugena Malveaux

Chapter 7

TENTATIVE RULING

The Court is inclined to CONTINUE the hearing for Movant to present evidence in support.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kellie Eugena Malveaux

Represented By
Mona V Patel

Movant(s):

Kellie Eugena Malveaux

Represented By
Mona V Patel
Mona V Patel

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:17-10546 Robert M. Rubalcaba and Brasenia Rubalcaba

Chapter 7

#16.00 Motion for extension of time to file a complaint objecting to discharge

EH__

Docket 22

Tentative Ruling:

6/7/2017

BACKGROUND

On January 23, 2017, Robert & Brasenia Rubalcaba filed a Chapter 7 voluntary petition. The meeting of creditors was originally scheduled for March 2, 2017, and has been continued at least three times.

On May 1, 2017, Trustee filed a motion for an extension of time to file a complaint objecting to discharge.

DISCUSSION

Fed. R. Bankr. P. Rule 4004(a) states:

- (1) In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT...

Robert M. Rubalcaba and Brasenias Rubalcaba

Chapter 7

after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And Fed. R. Bankr. P. Rule 4004(b) states:

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, Debtor's delay in providing the requested information constitutes sufficient cause to extend the deadline. *See* Collier on Bankruptcy ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

Moreover, Debtor's failure to oppose may be deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT... Robert M. Rubalcaba and Brasenía Rubalcaba

Chapter 7

Party Information

Debtor(s):

Robert M. Rubalcaba

Represented By
David L Nelson

Joint Debtor(s):

Brasenía Rubalcaba

Represented By
David L Nelson

Movant(s):

Steven M Speier (TR)

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:17-12976 Modern Properties, LLC

Chapter 7

#17.00 Motion to Vacate Dismissal of Case

EH__

Docket 12

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Modern Properties, LLC

Represented By
Robert L Firth

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:03-15174 Devore Stop A General Partners

Chapter 7

Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#18.00 CONT Status Conference RE: [1] Complaint by William G Morschauser against Continental Capital LLC , Stephen Collias , Jesse Bojorquez , American Business Investments , Mohammed Abdizadeh . (91 (Declaratory judgment)) , (72 (Injunctive relief - other))

HOLDING DATE

From: 3/11/15, 5/20/15, 7/29/15, 12/16/15, 2/3/16, 3/16/16, 5/11/16, 8/31/16, 11/2/16, 11/16/16, 3/8/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/26/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Devore Stop A General Partners

Chapter 7

Continental Capital LLC

Represented By
Cara J Hagan

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:11-47448 Allen Brandon Eley

Chapter 7

Adv#: 6:16-01086 Eley v. National Collegiate Student Loan

#19.00 CONT Motion to Compel Further Discovery Responses from Defendant to Plaintiff's First Request For Production of Documents and First Set of Interrogatories, and Request For Attorney's Fees, Costs and Sanctions
HOLDING DATE

From: 2/8/17, 4/26/17

EH__

Docket 15

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/1/17**

Tentative Ruling:

02/08/2017

Given the Court's intention to GRANT defendant's Motion for Summary Judgment and dismiss the adversary proceeding, this Motion shall go off calendar as moot.

Party Information

Debtor(s):

Allen Brandon Eley

Pro Se

Defendant(s):

National Collegiate Student Loan

Represented By
Damian P Richard
Debbie P Kirkpatrick

Movant(s):

Allen Brandon Eley

Represented By
David Brian Lally

Plaintiff(s):

Allen Brandon Eley

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... **Allen Brandon Eley**

David Brian Lally

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-14986 David Wayne Wakefield

Chapter 7

Adv#: 6:13-01233 Continental East Fund IV, LLC v. Wakefield et al

#20.00 CONT Status Conference re: Adversary case 6:13-ap-01233. Complaint by Continental East Fund IV, LLC against David Wakefield, Elise Wakefield. false pretenses, false representation, actual fraud

From: 9/18/13. 2/12/14, 4/23/14, 8/20/14, 10/1/14, 10/22/14, 1/14/15, 2/18/15, 6/17/15, 8/26/15, 9/2/15, 11/18/15, 5/18/16, 5/25/16, 7/27/16, 1/11/17, 4/12/17, 5/17/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED - ORDER
ENTERED 5/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Wayne Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Defendant(s):

Elise Wakefield

Represented By
Robert E Huttenhoff

David Wakefield

Represented By
Robert E Huttenhoff

Joint Debtor(s):

Elise Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... David Wayne Wakefield

Chapter 7

Plaintiff(s):

Continental East Fund IV, LLC

Represented By
Kyra E Andrassy
William A Floratos

Trustee(s):

Howard B Grobstein (TR)

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#21.00 CONT Motion to Dismiss Adversary Proceeding

From: 3/8/17, 4/26/17

Also #22

EH__

Docket 7

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 5/23/17**

Tentative Ruling:

3/8/17

BACKGROUND

On October 5, 2016, Jiangmin Li ("Defendant") filed a Chapter 7 voluntary petition.

On January 9, 2017, Dongxia Qiu ("Plaintiff") filed an adversary complaint against Defendant, seeking a non-dischargeability finding. On February 8, 2017, Defendant filed a motion to dismiss for failure to state a claim. On February 22, 2017, Plaintiff filed her opposition. On March 3, 2017, Defendant filed a late reply.

The adversary complaint arises from state court litigation between the two parties. Plaintiff's state court complaint included ten causes of action: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) rescission – fraud; (4) rescission – mistake; (5) conversion; (6) breach of fiduciary duty; (7) imposition of constructive trust; (8) accounting; (9) unjust enrichment; and (10) breach of written contract. The Court ruled in favor of Plaintiff on her fourth (rescission – mistake) and

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Jiangmin Li

Chapter 7

sixth (breach of fiduciary duty) causes of action. The Court ruled against Plaintiff on the first (intentional misrepresentation) and third (rescission – fraud) causes of action. The Court deemed the second, fifth, seventh, eighth, ninth, and ten causes of action to have been forfeited due to Plaintiff's failure to adequately brief the issues.

DISCUSSION

Fed. R. Civ. P. Rule 12(b)(6) states:

(b) Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. Rule 12(d) states:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Here, Defendant has submitted a request for judicial notice, so the Court must initially determine whether to grant or deny the request. Pursuant to Fed. R. Civ. P. Rule 12(b)(6), granting a request for judicial notice may cause the Court to convert the motion to a motion for summary judgment. *See, e.g., Jacobson v. AEG Capital Corp.*, 50 F.3d 1493, 1496 (9th Cir. 1995) ("In considering AEG's motion to dismiss, the district court took judicial notice of the extensive records and transcripts from the prior bankruptcy proceedings. We therefore review the district court's dismissal as an order granting summary judgment."). The Court may "consider unattached evidence

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Jiangmin Li

Chapter 7

on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document," without converting the motion to a motion for summary judgment. *See U.S. v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011).

Here, the unattached evidence contained in Defendant's request for judicial notice satisfies the above test. Plaintiff necessarily relied on the documents. In fact, the Plaintiff appears to have erroneously omitted the documents when filing the complaint, since the complaint purports to attach the three documents and references the documents throughout. Therefore, the Court will grant the request for judicial notice, and evaluate the motion as a motion to dismiss for failure to state a claim.

The standard for a Rule 12(b)(6) motion to dismiss is the following:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true. . . . The need at the pleading stage for allegations plausibly suggesting agreement reflects the threshold requirement of Rule 8(a)(2) that the "plain statement" possesses enough heft to "show that the pleader is entitled to relief.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007) (quotations and parentheses omitted).

Here, Plaintiff states two causes of action, both relating to non-dischargeability, under 11 U.S.C. § 523(a)(4) and (6). Defendant alleges that both causes of action are barred by collateral estoppel.¹ The state court statement of decision found denied Plaintiff's

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Jiangmin Li

Chapter 7

claims for intentional fraud and for rescission based on fraud. That decision granted Plaintiff's claims for unilateral mistake of fact and breach of fiduciary duty. While Plaintiff's complaint contained other causes of action, the state court deemed those causes of action to be forfeited by Plaintiff's failure to brief the issues.

"Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Collateral estoppel applies in dischargeability proceedings. *See Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). And it is appropriate to consider a collateral estoppel argument at the motion to dismiss stage. *See, e.g., Conopco, Inc. v. Roll Int't*, 231 F.3d 82, 86 (2nd Cir. 2000).

In California, "collateral estoppel bars relitigation when (1) the issue decided in the prior action is identical to the issue presented in the second action; (2) there was a final judgment on the merits; and (3) the party against whom estoppel is asserted was a party . . . to the prior adjudication." *Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1520 (9th Cir. 1987).

11 U.S.C. § 523(a)(4) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny

Plaintiff's complaint raises three disjunctive claims: (1) defalcation in a fiduciary capacity, (2) embezzlement, and (3) larceny. "To prevail in a § 523(a)(4) action, the creditor must establish that (1) a fiduciary relationship existed and (2) a defalcation occurred." *Erde v. Moriarty*, 2013 WL 12132069 at *6 (C.D. Cal. 2013). Defalcation under § 523(a)(4) was recently defined broadly and, somewhat vaguely, by the

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... **Jiangmin Li**
Supreme Court:

Chapter 7

Thus, where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary "consciously disregards" "a substantial and unjustifiable risk" that his conduct will turn out to violate a fiduciary duty. That risk "must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a *gross deviation* from the standard of conduct that a law-abiding person would observe in the actor's situation.

Bullock v. BankChampaign, N.A., 133 S. Ct. 1754, 1759-1760 (2013).

Embezzlement is the use of funds lawfully entrusted for an unauthorized purpose. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). Larceny is the "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010). "Larceny is distinguished from embezzlement in that the original taking of the property was unlawful." *In re Montes*, 177 B.R. 325, 331 (Bankr C.D. Cal. 1994).

In ruling against Plaintiff's causes of action for fraud and rescission based on fraud, the state court found that, regarding the certain misrepresentations that were the basis of Plaintiff's claim, "Plaintiff did not rely on those misrepresentations in entering into the April agreement." In both cases, the state court found that Plaintiff failed to demonstrate that it relied on the alleged misrepresentations of Defendant in entering into the contract. This finding of the state court does not constitute a finding that Defendant did not commit defalcation. As the Supreme Court quotation above highlights, the issues are substantially different.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Jiangmin Li

Chapter 7

The issues are also substantially different with regard to Plaintiff's § 523(a)(6) claim. 11 U.S.C. § 523(a)(6) states:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity

Again, the state court's finding that Plaintiff failed to demonstrate reliance on alleged misrepresentations of Defendant when entering into the contract at issue does not constitute a finding that Defendant did not commit a willful and malicious injury. The state court's findings underlining its ruling in Plaintiff's favor for rescission based on unilateral mistake of fact and breach of fiduciary duty could plausibly be considered to state a claim pursuant to § 523(a)(4) and (6).

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Jiangmin Li

Chapter 7

Movant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#22.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01004. Complaint by Dongxia Qiu against Jiangmin Li. fraud as fiduciary, embezzlement, larceny)), (68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/8/17, 4/26/17

Also #21

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 5/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-26277 Charles Frederick Biehl

Chapter 7

Adv#: 6:15-01265 Pringle v. Clements-Biehl

#23.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01265. Complaint by John P. Pringle against Rene Clements-Biehl. (Charge To Estate). (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/1/17, 3/29/17, 5/31/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - INACTIVE -
Steven L Bryson

Defendant(s):

Rene Clements-Biehl

Represented By
Allan D Sarver

Plaintiff(s):

John P. Pringle

Represented By
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Charles Frederick Biehl

Brandon J Iskander

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#24.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16, 12/14/16, 1/11/17, 5/17/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 AM**

Tentative Ruling:

12/14/2016

The instant Status Conference is CONTINUED to January 11, 2017, at 2:00 p.m., to be heard in conjunction with Defendants' Motion for Summary Judgment

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Defendant(s):

Steven R. Mather	Pro Se
Kenneth M. Barish	Pro Se
MATHER LAW CORPORATION,	Represented By Michael S Kogan
Kajan Mather & Barish, a	Represented By Michael S Kogan
MATHER KUWADA, a limited	Represented By Michael S Kogan

Plaintiff(s):

A. Cisneros	Represented By D Edward Hays Chad V Haes Franklin R Fraley Jr Sue-Ann L Tran Jasmine W Wetherell
-------------	---

Trustee(s):

Arturo Cisneros (TR)	Represented By Chad V Haes D Edward Hays Franklin R Fraley Jr
----------------------	--

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#25.00 Motion to set aside RE: Default

Also #26

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Pro Se

Movant(s):

Don Cameron Burns

Pro Se

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#26.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17

Also #25

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Pro Se

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Douglas Jay Roger

Franklin R Fraley Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#27.00 CONT Status Conference Re: Complaint by Hikmat Jabro against Mee Soon Kim, Tae Young Kim . (14 (Recovery of money/property - other))

From: 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:17-10032 Richard Earl Davis, Jr

Chapter 7

Adv#: 6:17-01066 Gumbs et al v. Davis, Jr et al

#28.00 Status Conference RE: [1] Adversary case 6:17-ap-01066. Complaint by Angelo M Gumbs , Kandis Gumbs against Richard Earl Davis Jr, Two6 Sports Management . false pretenses, false representation, actual fraud))

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Earl Davis Jr

Represented By
Todd L Turoci

Defendant(s):

Two6 Sports Management

Pro Se

Richard Earl Davis Jr

Pro Se

Plaintiff(s):

Kandis Gumbs

Represented By
Alexander B Boris

Angelo M Gumbs

Represented By
Alexander B Boris

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:17-11105 Joey James Valdez

Chapter 7

Adv#: 6:17-01065 Valdez v. Ford Motor Credit Co LLC

#29.00 Status Conference RE: [1] Adversary case 6:17-ap-01065. Complaint by Joey James Valdez against Ford Motor Credit Co LLC . (Fee Not Required). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(12 (Recovery of money/property - 547 preference)

EH _____

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joey James Valdez

Pro Se

Defendant(s):

Ford Motor Credit Co LLC

Represented By
Harlan M. Reese

Plaintiff(s):

Joey James Valdez

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:17-11311 AHMAD JAMALEDDIN ALJINDI

Chapter 7

Adv#: 6:17-01051 ALJINDI v. US DEPARTMENT OF EDUCATION ET AL

#30.00 Status Conference RE Amended Complaint by AHMAD JAMALEDDIN ALJINDI against US DEPARTMENT OF EDUCATION ET AL . (RE: related document(s)1 Adversary case 6:17-ap-01051. . Nature of Suit: (63 (Dischargeability - 523(a) (8), student loan)) filed by Plaintiff AHMAD JAMALEDDIN ALJINDI

EH__

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Defendant(s):

US DEPARTMENT OF Represented By
Elan S Levey

Plaintiff(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Trustee(s):

Lynda T. Bui (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:14-16813 M. A. Tabor

Chapter 7

Adv#: 6:16-01128 Frealy v. Trotochau et al

#31.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01128. Complaint by Todd A. Frealy against Robin Sherrie Trotochau, Pacific Mortgage Exchange, Inc.. (Charge To Estate). - Complaint: (1) For Breach Of Contract; (2) For Common Counts; (3) To Avoid And Recover Fraudulent Transfers; And (4) To Preserve Recovered Transfers For Benefit Of Debtor's Estate (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 7/20/16, 9/28/16, 1/11/17, 3/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M. A. Tabor

Represented By
Judith Runyon

Defendant(s):

Pacific Mortgage Exchange, Inc.

Represented By
Salvatore Bommarito

Robin Sherrie Trotochau

Pro Se

Plaintiff(s):

Todd A. Frealy

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... M. A. Tabor

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:14-16872 William Redfield Barlow, III

Chapter 7

Adv#: 6:17-01021 Whitmore v. E*Trade Securities, LLC et al

#32.00 CONT Status Conference Re: Complaint by Robert Whitmore against E*Trade Securities, LLC. (Charge To Estate - \$350.00). Complaint for Turnover of Property of the Bankruptcy Estate (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Summons and Notice of Status Conference) Nature of Suit: 11-Recovery of money/property - 542 turnover of property

From: 4/5/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Redfield Barlow III

Represented By
Michael E Clark
Heather J Canning

Defendant(s):

E*Trade Financial Corporation

Pro Se

E*Trade Securities, LLC

Pro Se

Joint Debtor(s):

Lindsay Marie Barlow

Represented By
Michael E Clark
Heather J Canning

Plaintiff(s):

Robert Whitmore

Represented By
Julie Philippi

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... William Redfield Barlow, III

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-17802 Armon Randolph Sharp

Chapter 7

Adv#: 6:17-01053 Cisneros v. Simpson

#33.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01053. Complaint by Arturo Cisneros against William J. Simpson. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property))

From: 5/3/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Defendant(s):

William J. Simpson

Pro Se

Plaintiff(s):

Arturo Cisneros

Represented By
Toan B Chung

Trustee(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-16834 Kristi Lea Trimble

Chapter 7

Adv#: 6:16-01252 Trimble v. UNITED STATES OF AMERICA, IRS

#34.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01252. Complaint by Kristi Lea Trimble against UNITED STATES OF AMERICA, IRS. (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims))

From: 12/14/16, 2/15/17

EH__

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 5/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Defendant(s):

UNITED STATES OF AMERICA,

Pro Se

Plaintiff(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-16191 Sheri Tanaka Christopher

Chapter 7

Adv#: 6:17-01028 Freal, Chapter 7 Trustee v. Tanaka et al

#35.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01028. Complaint by Todd A Freal, Chapter 7 Trustee against Ronald Howard Tanaka, Carolyn Naomi Tanaka, Ryan Satoshi Tanaka, Leora Linda Tanaka, Estate of Yaeko Sato, a California Probate Estate. (Charge To Estate). Complaint for: (1) Sale of Real Property Pursuant to 11 U.S.C. § 363(h); and (2) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542 (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property))

From: 4/5/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheri Tanaka Christopher

Represented By
Brian J Soo-Hoo

Defendant(s):

Leora Linda Tanaka

Represented By
David L Prince

Estate of Yaeko Sato, a California

Represented By
David L Prince

Ryan Satoshi Tanaka

Represented By
David L Prince

Ronald Howard Tanaka

Represented By
David L Prince

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... **Sheri Tanaka Christopher**
Carolyn Naomi Tanaka

Represented By
David L Prince

Chapter 7

Plaintiff(s):

Todd A Frealy, Chapter 7 Trustee

Represented By
Monserrat Morales

Trustee(s):

Todd A. Frealy (TR)

Represented By
Monserrat Morales

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-11635 Sam Daniel Dason

Chapter 7

Adv#: 6:16-01211 Olivares v. Dason

#36.00 CONT Status Conference Re: Amended Complaint by Juddy Olivares, Eric A Panitz against Sam Daniel Dason; 68- Dischargeability - 523(a)(6) Willful and Malicious Injury

From: 11/2/16, 1/4/17, 3/1/17, 3/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Defendant(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Plaintiff(s):

Juddy Olivares

Represented By
Lazaro E Fernandez

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-12900 Richard G Rothman

Chapter 7

Adv#: 6:16-01170 California Solar Thermal, Inc. v. Rothman

#37.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01170. Complaint by California Solar Thermal, Inc. against Richard G Rothman. Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), (68 (Dischargeability - 523(a)(6), willful and malicious injury)), (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny))

From: 9/7/16, 1/11/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard G Rothman

Represented By
Daniel J Winfree

Defendant(s):

Richard G Rothman

Represented By
Daniel J Winfree

Joint Debtor(s):

Shari A Randall

Represented By
Daniel J Winfree

Plaintiff(s):

California Solar Thermal, Inc.

Represented By
Douglas A Plazak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Richard G Rothman

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-13096 Tarek El Sayed Ayoub

Chapter 7

Adv#: 6:16-01219 Candee et al v. Ayoub et al

#38.00 CONT Status Conference Re: Complaint by Keith H Candee, Original Thurber Ranch LLC against Tarek El Sayed Ayoub, Gabriela Villeda Ayoub

From: 11/1/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tarek El Sayed Ayoub

Represented By
Sherif Fathy

Defendant(s):

Gabriela Villeda Ayoub

Represented By
Sherif Fathy

Tarek El Sayed Ayoub

Represented By
Sherif Fathy

Joint Debtor(s):

Gabriela Villeda Ayoub

Represented By
Sherif Fathy

Plaintiff(s):

Original Thurber Ranch LLC

Represented By
Jon H Lieberg

Keith H Candee

Represented By
Jon H Lieberg

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Tarek El Sayed Ayoub

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-13311 Jose Antonio Hernandez

Chapter 7

Adv#: 6:16-01176 Simons v. Navarro

#39.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:16-01295 Abbasi v. Surace et al

#40.00 CONT Status Conference Re: Complaint by Setareh Abbasi, Bruce Dannemeyer, Jaison Vally Surace against Jaison Vally Surace, Walie Qadir, Marym Qadir. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 13 - Recovery of money/property - 548 fraudulent transfer, 91 - Declaratory judgment, 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 2/15/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Marym Qadir

Represented By
Batkhand Zoljargal

Walie Qadir

Represented By
Batkhand Zoljargal

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

Setareh Abbasi

Represented By
Bruce Dannemeyer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Jaison Vally Surace

Chapter 7

Bruce Dannemeyer

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01143 Simons v. Caffery Financial, inc. et al

#41.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01143. Complaint by Larry D Simons against Caffery Financial, inc., Joe G. Caffery, Kim Caffery, Caffery Family Trust (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 1/11/17, 2/15/17, 4/26/17

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
----------------------	--------

Defendant(s):

Caffery Family Trust	Pro Se
Caffery Financial, inc.	Pro Se
Joe G. Caffery	Pro Se
Kim Caffery	Pro Se

Joint Debtor(s):

Tami Jo Springer	Pro Se
------------------	--------

Plaintiff(s):

Larry D Simons	Represented By Sarah Cate Hays D Edward Hays
----------------	--

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Dean L. Springer, Sr.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01140 Simons v. Lindgren

#42.00 CONT Motion for Entry of Default Judgment

From: 4/12/17, 5/17/17

Also #43

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Defendant(s):

Charles Lindgren

Pro Se

Joint Debtor(s):

Tami Jo Springer

Pro Se

Movant(s):

Larry D Simons

Represented By
Sarah Cate Hays
D Edward Hays

Plaintiff(s):

Larry D Simons

Represented By
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Dean L. Springer, Sr.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01140 Simons v. Lindgren

#43.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01140. Complaint by Larry D Simons against Charles Lindgren (12 (Recovery of money/property - 547 preference)), (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 3/1/17, 4/12/17, 5/17/17

Also #42

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
----------------------	--------

Defendant(s):

Charles Lindgren	Pro Se
------------------	--------

Joint Debtor(s):

Tami Jo Springer	Pro Se
------------------	--------

Plaintiff(s):

Larry D Simons	Represented By Sarah Cate Hays D Edward Hays
----------------	--

Trustee(s):

Larry D Simons (TR)	Represented By
---------------------	----------------

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Dean L. Springer, Sr.

Chapter 7

Richard A Marshack
Sarah Cate Hays
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-18609 Carlos Garrido

Chapter 7

Adv#: 6:16-01309 Kercado v. Garrido

#44.00 Motion for Default Judgment

Also #45

EH__

Docket 7

Tentative Ruling:

6/7/17

BACKGROUND

On September 26, 2016, Carlos & Maribelle Garrido ("Debtors") filed a Chapter 7 voluntary petition. On December 30, 2016, Maria Kercado ("Plaintiff") filed a non-dischargeability complaint against Carlos Garrido ("Defendant").

The clerk entered default against Defendant on February 10, 2017. Plaintiff filed a motion for default judgment on April 15, 2017.

FACTUAL BACKGROUND

On May 13, 2013, Plaintiff and Defendant entered into a contract for a \$50,000 loan. Defendant was to make \$1,000 monthly payments to Plaintiff and Plaintiff was to take a security interest in a 1990 Arriva Boat. Defendant overestimated the value of the boat to Plaintiff, and Plaintiff states that the boat was in complete disrepair. In December 2013, Defendant stated that, every fourth month he would make a payment of \$2,000 instead of the contractual \$1,000. On February 2014, Defendant ceased

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... **Carlos Garrido**
making payments.

Chapter 7

On April 9, 2014, Plaintiff filed a state court lawsuit against Defendant for breach of contract, negligent misrepresentation, and conversion. On October 27, 2015, Plaintiff obtained a judgment against Defendant in the amount of \$37,000.

DISCUSSION

A. Entry of Default

Fed. R. Civ. P. Rule 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 7055-1 provides further requirements regarding a motion for entry of default judgment, and those requirements have been substantially satisfied here.

B. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (*quoting Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Carlos Garrido

Chapter 7

1. Proper Service of Summons and Complaint

Fed. R. Bankr. P. Rule 7004(b)(1) states, in part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

- (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Here, Plaintiff served Debtors and their counsel at the addresses of record.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *see also Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at *4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

Here, the complaint includes three causes of action: § 523(a)(6) and § 523(a)(2)(A) twice.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Carlos Garrido

Chapter 7

Regarding § 523(a)(2)(A), the elements are: (1) the debtor made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representation; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *See, e.g., In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991). Plaintiff has adequately plead facts to satisfy the elements of § 523(a)(2)(A).

Regarding § 523(a)(6) the elements are: "(1) willful conduct, (2) malice, and (3) causation." *See, e.g., In re Apte*, 180 B.R. 223, 230 (B.A.P. 9th Cir. 1995). Plaintiff has adequately plead facts to satisfy the elements of § 523(a)(6)

3. Amount of Damages

Local Rule 7055-1(b)(1)(2) requires a declaration establishing the amount of damages when the amount claimed is unliquidated. Here, the amount claimed is liquidated. Therefore, the amount of damages has been adequately established.

TENTATIVE RULING

Based on the foregoing, the Court will GRANT the motion, and adjudicate that the debt represented by the state court judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6).

APPEARANCES WAIVED. Movant to lodge an order and proposed judgment within

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Carlos Garrido

Chapter 7

seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Carlos Garrido

Represented By
Inez Tinoco-Vaca

Defendant(s):

Carlos Garrido

Pro Se

Joint Debtor(s):

Maribelle Garrido

Represented By
Inez Tinoco-Vaca

Movant(s):

Maria Kercado

Represented By
Sergio A Rodriguez

Plaintiff(s):

Maria Kercado

Represented By
Sergio A Rodriguez

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-18609 Carlos Garrido

Chapter 7

Adv#: 6:16-01309 Kercado v. Garrido

#45.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01309. Complaint by Inmaculada Kercado, Maria Inmaculada Kercado against Carlos Garrido. false pretenses, false representation, actual fraud)), (68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/1/17, 5/3/17

Also #44

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Garrido

Represented By
Inez Tinoco-Vaca

Defendant(s):

Carlos Garrido

Pro Se

Joint Debtor(s):

Maribelle Garrido

Represented By
Inez Tinoco-Vaca

Plaintiff(s):

Maria Kercado

Represented By
Sergio A Rodriguez

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Carlos Garrido

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#46.00 Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment

Also #47

EH__

Docket 208

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#47.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17

Also #46

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#48.00 CONT OSC why defendant's answer should not be stricken and default entered and defendant sanctioned for failure by defendant to appear at the initial status conference and participate in the preparation of the initial status report

From: 5/31/17

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:14-01081 Albrecht v. Slaieh

#49.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01081. Complaint by W.E. Jon Albrecht against Nabeel Slaieh. willful and malicious injury))

HOLDING DATE

From: 10/19/16, 12/14/16, 2/15/17, 3/29/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Slaieh

Represented By
Stephen B Mashney
Bruce A Boice
George A Saba

Plaintiff(s):

W E Jon Albrecht

Represented By
William L Miltner
Robert C Harvey

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Nabeel Slaieh

Matthew Grimshaw

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#50.00 CONT Motion to Dismiss the Amended Counter-Claims Pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure

From: 4/26/17, 5/17/17

Also #51 & #52

EH__

Docket 44

Tentative Ruling:

6/7/17

I. PROCEDURAL BACKGROUND

On April 31, 2016, Trustee filed a complaint against Nabeel Naiem Slaieh and Joanne Fraleigh (collectively, "Defendants") (individually, "Slaieh" and "Fraleigh") for avoidance and recovery of unauthorized post-petition transfer. After early disagreements regarding the sufficiency of service, the parties stipulated that Fraleigh was properly served and the Court ordered Defendants' response due December 16, 2016.

On December 16, 2016, Defendants filed an answer and "cross-claims"¹ (hereinafter,

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

"counter-claims", and "counter-complaint") against Trustee and his professionals ("Counter-Defendants") for: (1) breach of contract; (2) fraud & deceit; (3) extortion; (4) conversion; (5) defamation and slander; (6) negligence; (7) breach of fiduciary duties; (8) violation of Cal. Bus. & Prof. Code § 17200; (9) intentional infliction of emotional distress; and (10) wrongful eviction. On January 17, 2017, Counter-Defendants filed a motion to dismiss the counter-claims pursuant to Fed. R. Civ. P. Rule 12(b)(6). On January 18, 2017, Fraleigh filed a voluntary dismissal of her counter-complaint. On January 29, 2017, Slaieh filed his opposition to Counter-Defendants' motion to dismiss. On February 8, 2017, Counter-Defendants filed their reply and evidentiary objections. On March 6, 2017, the Court entered an order dismissing the counter-complaint with prejudice, with the exception of the fifth cause of action (defamation and slander).

On March 3, 2017, Slaieh filed a renewed counter claim ("Amended Counterclaim") against Trustee and his professionals for: (1) slander; (2) defamation; and (3) intentional infliction of emotion distress. On March 24, 2017, Trustee filed a motion to dismiss for failure to state a claim. On May 4, 2017, Slaieh filed his opposition to the motion, and on May 30, 2017, Trustee filed a reply.

II. FACTUAL BACKGROUND

The fact patter that forms the basis of Slaieh's motion involves the enforcement of this Court's sale order regarding certain real property located in Temecula (the "Real Property"). That order, entered May 26, 2016, stated, in part:

13. Pursuant to 11 U.S.C. §§ 542(a) and 704(a)(1), Debtor, his non-debtor spouse, and all occupants of the Property are ordered to vacate the Property no later than June 7, 2016, at 9:00 a.m., and they shall surrender possession of the Property to Trustee's designated custodian at that time, and in turn, Trustee shall immediately deliver possession to Buyer;

14. If Debtor, his non-debtor spouse, or any other occupants of the Property fails to vacate the Property by 9:00 a.m. on June 7, 2016, then the Trustee may direct the United States Marshals Service to: (a) forcibly evict and lockout all

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Nabeel Slaieh

Chapter 7

occupants of the Property; and (b) surrender possession of the Property to the Trustee's designated custodian;

15. The Attorneys for the Chapter 7 Trustee may prepare a Write of Assistance consistent with this Order for the Clerk of the Court to issue;

16. If Debtor, his non-debtor spouse, or any other occupant of the Property fail to vacate the Property by 9:00 a.m. on June 7, 2016, then the Trustee is authorized to expend \$1,500.00 to (a) rent a U-Haul (or similar) moving truck ("Moving Vehicle") and (b) hire an agent (without the need of filing an employment or fee application) to facilitate the removal of any personal property items left at the Property ("Personal Items");

17. On the same day that the Personal Items are removed from the Property, the Trustee may arrange with Debtor's counsel, for a three (3) hour time period whereby Debtor's non-debtor spouse may meet the Trustee's agent and remove whatever Personal Items they desire from the Moving Vehicle ("Removal Period");

18. Regardless of the reason as to why the Personal Items were not removed, at the end of the Removal Period, the Trustee may discard all Personal Items remaining in the Moving Vehicle at any time without further order of this Court;

19. When the procedure for removing Personal Items is completed, the Trustee, his agents, and Buyer will have been deemed to have satisfied any obligations they may have under California law (or other applicable law) relating to the removal and/or abandonment of Debtor's personal items;

Slaieh unsuccessfully appealed the sale order to United States District Court, Central District of California. On July 13, 2016, the United States Marshal Service posted a notice to vacate the Real Property, instructing the occupants to vacate by July 20, 2016. The day before eviction was to occur, Fraleigh filed a quiet title complaint in state court. Fraleigh also filed an *ex parte* application for a temporary restraining order. The basis for Fraleigh's complaint and application was that Slaiegh transferred the Real Property to Fraleigh on or around May 7, 2016. On July 20, 2016, the state court entered a stay of eviction until July 28, 2016. On July 21, 2016, Trustee filed an emergency motion with this Court, requesting that the state court stay be dissolved and that the Court find the state court was without jurisdiction to enter the stay. That

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... **Nabeel Slaieh**
motion was granted the same day.

Chapter 7

Later in July 2016, the United States Marshal Service evicted Slaieh. At the time of the eviction certain windows and doors were missing from the Real Property. Slaieh's Amended Counterclaim states that Trustee's attorney accused Slaieh of stealing the windows and doors from the home, and that certain individuals, namely Fraleigh and some "employees," were there at the time the statement was made.

III. DISCUSSION

Fed. R. Civ. P. Rule 12(b)(6), incorporated by Fed. R. Bankr. P. Rule 7012(b), states:

(b) Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)), stated the following:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility, that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Nabeel Slaieh

between possibility and plausibility of "entitlement to relief."

Chapter 7

A. Evidentiary Objections

Slaieh has raised numerous evidentiary objections that will be disposed of summarily by the Court. All of Slaieh's "evidentiary objections" are overruled by the Court on the basis that they are vague. Specifically, the Court cannot ascertain what Slaieh is objecting to, since Slaieh appears to have invented an exhibit numbering system that does not resemble the actual numbering of the exhibits. Furthermore, all Slaieh's evidentiary objections merely state that he objects on relevancy grounds without any discussion or description of why the matter is irrelevant.

B. Slaieh's Causes of Actions

Counts 1 & 2: Slander & Defamation

Slaieh's first cause of action is slander. Slander is defined in California as:

a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT...

Nabeel Slaieh

Chapter 7

business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;

4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

Cal. Civ. Code § 46 (1945). "To prevail in a defamation claim under California law, a plaintiff must allege '(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.'" *Bowen v. M. Caratan, Inc.*, 142 F. Supp. 3d 1007, 1033 (E.D. Cal. 2015) (quoting *Taus v. Loftus*, 40 Cal. 4th 683, 720 (Cal. 2007)). "Publication means communication to a third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made." *Arikat v. JP Morgan Chase*, 430 F. Supp. 2d 1013, 1020 (N.D. Cal. 2006).

Here, Slaieh's first cause of action has sufficiently alleged the elements of slander/defamation to survive a motion to dismiss for failure to state a claim. Specifically, Slaieh has described the alleged publication (the statement alleging theft), has alleged that the statement was false, the statement is presumptively defamatory, the statement is not clearly privilege, and the statement described has a natural tendency to injury. Slaieh's second cause of action appears to allege that Counter-Defendants have slandered Fraleigh. Fraleigh, however, is not a party to the Amended Counter-complaint and Slaieh cannot assert her rights in the counter-complaint. Therefore, Slaieh lacks standing to bring the second cause of action.

Counts 3: Intentional Infliction of Emotional Distress:

Slaieh's third of action is intentional infliction of emotional distress. This cause of action was dismissed with prejudice on March 6, 2017. Slaieh states in his opposition that:

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

In addition to amending the causes of action for defamation and slander per se causes of action, Debtor kept the Intentional Inflictions of Emotional Distress since there was a confusion as to whether this cause of action was dismissed when the court initially held to grant the motion to dismiss *in its entirety* or whether that cause of action was dismissed because some other causes of action, but not the defamation and slander per se causes of action were dismissed.

The intentional infliction of emotional distress cause of action was dismissed with prejudice, and the order entered on March 6, 2017, is unambiguous in that respect. Slaieh also states: "The court's order as to the IIED claim is silent as to which claim that was sustained this IIED claim referred to, Debtor is entitled under California Law to seek IIED on each of the slander and defamation claims." This statement is confusing to the point of being incomprehensible, although it appears he may believe that intentional infliction of emotional distress is a component of damages, instead of a cause of action. Regardless, as noted above, Slaieh's third cause of action was previously dismissed with prejudice.

C. Trustee's Qualified Immunity

"Bankruptcy trustees are entitled to broad immunity from suit when acting within the scope of their authority and pursuant to court order." *In re Harris*, 590 F.3d 730, 742 (9th Cir. 2009) (*quoting Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989)). "Additionally, 'court appointed officers who represent the estate are the functional equivalent of a trustee.'" *Id.* (*quoting In re Crown Vantage, Inc.*, 4 F.3d 963, 973 (9th Cir. 2005)).

"For derived quasi-judicial immunity to apply, the defendants must satisfy the following four elements: (1) their acts were within the scope of their authority; (2) the debtor had notice of their proposed acts; (3) they candidly disclosed their proposed acts to the bankruptcy court; and (4) the bankruptcy court approved their acts." *Id.*

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Furthermore, to support a claim against the Trustee, the Trustee's alleged actions must typically be willful and deliberate – negligence will not suffice. *See, e.g., In re Hunter*, 553 B.R. 866, 873 (Bankr. D.N.M. 2016) (*quoting Sherr v. Winkler*, 552 F.2d 1367, 1375 (10th Cir. 1977)).

Regarding Counter-Defendants' actions related to the sale of the Real Property, and the eviction of Slaieh, Trustee is entitled to quasi-immunity. The sale of the Real Property and the eviction are within the scope of a trustee's duties, were disclosed to the Court, and were subsequently approved by the Court. And Slaieh clearly had notice of the proposed acts, given that he vigorously contested their execution. Furthermore, a necessary component of Counter-Defendants' duty in executing the eviction in preparation of the sale is to investigate the sudden disappearance of necessary fixtures from the Real Property. *See, e.g., In re Cedar Funding, Inc.*, 419 B.R. 807, 822 (B.A.P. 9th Cir. 2009) (immunity for "trustee's communications [that] occurred while he was performing his official statutory duties"). While, clearly, the specific alleged statements at issue here were not authorized by the Court, "quasi-judicial immunity attaches to [] those functions essential to the authoritative adjudication of private rights to the bankruptcy estate." *In re Castillo*, 297 F.3d 940, 951 (9th Cir. 2002). Here, the allegedly defamatory statements were made in direct response to the disappearance of estate property, the sale of which had been authorized pursuant to Court order, and the disappearance of which was the sole responsibility of the Trustee to investigate.

Policy also has a role in this analysis. Taking judicial notice of the record of this bankruptcy case, prior to the eviction there was, among other things, evidence of concern that Slaieh may destroy or damage the Real Property. [*See, e.g., May 4th hearing transcript in case 13-bk-30133-MH and related declarations, including Dkt. 322, ex. 1*]. The application of the doctrine of quasi-judicial immunity to bankruptcy trustees and their professionals is based on a policy of protecting the bankruptcy process. Given the circumstances evidenced by the record of this case, including the extensive lengths to which Slaieh went to prevent the Trustee from selling the Real Property and actions to frustrate the Trustee's efforts, and the stated concern by Trustee's broker of possible damage to the Real Property by Slaieh approximately two months prior to the eviction date, the Court concludes that the alleged defamatory statements are protected as within the reasonable exercise of Trustee's efforts to investigate and recover missing estate property, and, therefore are covered by Counter-Defendants' quasi-judicial immunity.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Therefore, the Court holds that Counter-Defendants are entitled to quasi-judicial immunity with regard to the alleged slanderous statements, and that, therefore, Counter-Defendants are entitled to have the Amended Counterclaim dismissed.

D. Failure to Name Parties

As asserted by Counter-Defendants, the Amended Counterclaim does not allege any action by Counter Defendants Larry D. Simons and David A. Wood, nor has Plaintiff alleged with any specificity how liability attaches to those Counter Defendants. On that basis, the Amended Counterclaim shall be dismissed as to those Counter Defendants.

E. Leave to Amend

Trustee has requested that the complaint be dismissed without leave to amend. Fed. R. Civ. P. Rule 15(a)(2), incorporated by Fed. R. Bankr. P. Rule 7015, provides that: "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." The Supreme Court has previously provided a non-exhaustive list of reasons why leave to amend should be denied. *Forman v. Davis*, 371 U.S. 178, 182 (1962) ("undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc."); see also *United Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir. 1990) (denial when amendment would be "clearly frivolous, unduly prejudicial, cause undue delay or a finding of bad faith is made").

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

The Court notes, however, that claims arising from the factual situation described by Slaieh are subject to quasi-judicial immunity, as noted in Section III.C, *supra*. See, e.g., *In re Keenan*, 339 Fed. Appx. 809, 810 (9th Cir. 2009) ("Dismissal with prejudice was proper because quasi-judicial immunity precludes the Keenans' claims."). All of the actions alleged by Slaieh arise from duties that are within the scope of Trustee's authority, were disclosed to, and approved by the Court, and of which Slaieh received proper notice. Finally, this is the third time that Slaieh has presented these claims against Counter-Defendants, and the third time Slaieh has failed to put forth a *prima facie* case. (See order denying Slaieh's *Barton* motion filed as Docket No. 453 in 13-bk-3011-MH and Docket No. 37 in 16-ap-1224-MH). For all of these reasons, the Court determines that it is appropriate to dismiss the counter-complaint with prejudice.

TENTATIVE RULING

For the reasons stated above, and otherwise as set forth in Trustee's motion to dismiss and his reply, the Court's tentative ruling is to GRANT the motion and DISMISS the counter-complaint with prejudice.

APPEARANCES REQUIRED.

04/26/2017

The Court, having reviewed the Trustee's Unilateral Status Report indicating that he has agreed to a continuance of the hearing, the Trustee may appear telephonically.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Movant(s):

Mathew Grimshaw

Pro Se

Larry D Simons (TR)

Represented By
George A Saba
Matthew Grimshaw

D. Edward Hays

Pro Se

Larry D Simons (TR)

Pro Se

Marshack Hays LLP

Pro Se

D. Edward Hays

Represented By
George A Saba
Matthew Grimshaw

Larry D Simons (TR)

Pro Se

Marshack Hays LLP

Represented By
George A Saba
Matthew Grimshaw

Mathew Grimshaw

Represented By
George A Saba
Matthew Grimshaw

David Wood

Represented By
George A Saba
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#51.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17, 4/26/17, 5/17/17

Also #50 - #52

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#52.00 CONT Status Conference RE: [39] Counterclaim by Nabeel Naiem Slaieh against Mathew Grimshaw, D. Edward Hays, Marshack Hays LLP, Larry D Simons (TR), David Wood

From: 4/26/17, 5/17/17

Also #50 & #51

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

David A. Wood

Pro Se

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw